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09/611,157	07/06/2000	Steven D. Ims	RSW9-2000-0034-US1	5464

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EXAMINER

CALDWELL, ANDREW T

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 07/06/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

2

## Office Action Summary

Application No.

09/611,157

Applicant(s)

IMS ET AL.

Examiner

Andrew Caldwell

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-16, 23-32 and 39-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-16, 23-32 and 39-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**Remarks**

Claims 7-16, 23-32, and 39-48 are pending.

The following patents cited on the Form 892 attached to this Office action appear to be commonly assigned: 6,584,548; 6,694,328; and 6,718,515. The Applicants are requested to file a statement invoking the exclusion of commonly assigned prior art under 35 U.S.C. 103(c).

**Election/Restrictions**

Applicant's election without traverse of Invention II (claims 7-16, 23-32, and 39-48) in the reply filed on April 14, 2004 is acknowledged.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7-9, 12, 23-25, 28, 39-41, and 44 are rejected under 35 U.S.C. 103(a) as being anticipated by Skinner et al., U.S. Patent No. 6,721,740.

1           Regarding claim 23, Skinner anticipates the claimed invention by disclosing a  
2 system comprising:

3                 Means for storing one or more objects in a cache for responding to update  
4 requests against the objects (col. 13 lines 51—58 object cache at client tier),  
5 wherein (1) a set of input properties is stored with or associated with each stored  
6 object (col. 16 lines 28-33 showing serialized/cached object include the object  
7 state which in turn includes the input properties) and (2) update logic specifying  
8 how to update each of the stored objects is stored with or associated with the  
9 stored object or a group of stored objects (col. 16 lines 5-20 client-side update  
10 management);

11                Means for receiving update requests against one or more of the objects  
12 (col. 13 line 59 to col. 14 line 7);

13                Means for determining an update mode to use for a selected update  
14 request, responsive to the means for receiving (col. 17 lines 36-41);

15                Means for immediately processing the selected update request if the  
16 determined update mode is not a delayed update mode (discussion of updates  
17 prior to col. 17 lines 36-41 shows that they are propagated immediately if the  
18 client is connected);

19                Means for delaying processing of the selected update request otherwise  
20 (col. 17 lines 36-41).

21           Regarding claim 24, Skinner teaches a system wherein the means for delaying  
22 processing further comprises:

Means for queuing the selected update request, along with the input properties and values thereof which are to be used for performing the selected update request, as a queued update request on an update queue (col. 17 lines 36-41; col. 16 lines 28-33);

Means for detecting a triggering event for performing the delayed processing of the queued update requests (col. 17 lines 36-41; col. 16 lines 28-33);

Means for performing, responsive to the means for detecting, the queued update request (col. 17 lines 36-41; col. 16 lines 28-33).

Regarding claim 25, Skinner teaches a system wherein the means for performing further comprises means for setting the input properties of a selected object against which the queued update request is to be performed using the queued input property values (col. 17 lines 36-41; col. 16 lines 28-33) and means for executing the update logic stored with or associated with the selected object (col. 16 lines 5-20).

Regarding claim 28, Skinner teaches a system wherein the update policy comprises information about an associated object which is used for responding to read requests (col. 15 lines 10-27).

Regarding claims 7-9 and 12, they are media claims corresponding to apparatus claims 23-25 and 28, respectively. Since they do not teach or define above the information in the corresponding apparatus claims, they are rejected under the same basis.

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Regarding claims 39-41 and 44, they are method claims corresponding to apparatus claims 23-25 and 28, respectively. Since they do not teach or define above the information in the corresponding apparatus claims, they are rejected under the same basis.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11, 14, 27, 30, 43, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skinner in view of Baunnaure et al., U.S. Patent No. 5,862,339.

Regarding claims 11 and 14, they are media claims corresponding to apparatus claims 27 and 30, respectively. Since they do not teach or define above the information in the corresponding apparatus claims, they are rejected under the same basis.

Regarding claims 43 and 46, they are method claims corresponding to apparatus claims 27 and 30, respectively. Since they do not teach or define above the information in the corresponding apparatus claims, they are rejected under the same basis.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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1 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225  
2 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA  
3 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*,  
4 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

5 A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be  
6 used to overcome an actual or provisional rejection based on a nonstatutory double  
7 patenting ground provided the conflicting application or patent is shown to be commonly  
8 owned with this application. See 37 CFR 1.130(b).

9 Effective January 1, 1994, a registered attorney or agent of record may sign a  
10 terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with  
11 37 CFR 3.73(b).  
12  
13

14 Claims 7-16, 23-32, and 39-48 are rejected under the judicially created doctrine  
15 of obviousness-type double patenting as being unpatentable over claim 12 of U.S.  
16 Patent No. 6,505,200 . Although the conflicting claims are not identical, they are not  
17 patentably distinct from each other. Consider media claim 12 of the '200 patent. It  
18 teaches a system that intermittently connects to a remote device to perform updates on  
19 cached objects. So claim 12 teaches all of the features of claim 1 except for the  
20 determining an update mode and immediately processing the selected update request if  
21 the determined update mode is not a delayed update mode. It would have been  
22 obvious to one of ordinary skill in the art at the time the invention was made that the  
23 intermittently connected system of the '200 patent would immediately process an  
24 update request if connected. A person of ordinary skill in the art would recognize that it  
25 would be inefficient for the system of the '200 patent to wait until the next time the  
26 system connects in order to process a currently pending update request.  
27



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**Conclusion**

A shortened statutory period for response to this action is set to expire **three months** from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C. 133, M.P.E.P. 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Caldwell, whose telephone number is (703) 306-3036. The examiner can normally be reached on M-F from 9:00 a.m. to 5:30 p.m. EST.

If attempts to reach the examiner by phone fail, the examiner's supervisor, Glenton Burgess, can be reached at (703) 305-4792. Additionally, the fax numbers for Group 2100 are as follows:

Fax Responses: (703) 872-9306

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at (703) 305-9600.



Andrew Caldwell  
703-306-3036  
June 27, 2004